

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**AXION POWER INTERNATIONAL,
INC., WILLIAM AND TRACY AHEARN,
h/w, SALLY FONNER, and JAMES
SMITH, M.D.,**

Plaintiff,

-against-

Case No. 07 CV 11493

**MERCATUS & PARTNERS, LTD., CARI
MASI a/k/a CARY MASI, BANCA MB
S.p.A., DWIGHT PARSCALE,
STEPHANO CEVOLO,**

NOTICE OF MOTION

Defendants.

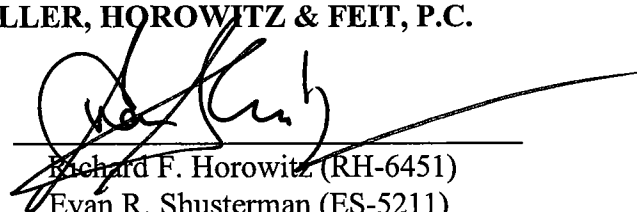
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PLEASE TAKE NOTICE that upon the Declaration of Cary Masi, the Affidavit of Evan R. Shusterman, Esq. and the Exhibits thereto, and upon the supporting Memorandum of Law and the exhibits thereto, defendants Defendants Mercatus & Partners, Ltd., Cari Masi A/K/A Cary Masi, and Stephano Cevolo will move this Court, before the Hon. Robert W. Sweet, U.S.D.J., at the Courthouse located at 500 Pearl Street, Courtroom 18C, New York, New York 10007, on the 30th day of July, 2008, at 12 o'clock noon, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 12 of the Federal Rules of Civil Procedure, dismissing the Amended Complaint for lack of subject matter jurisdiction.

Pursuant to Fed.R.Civ.P. Rule 6(a) and Rules 6.1(b) and 6.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, plaintiffs' papers in opposition to this motion, if any, must be served on or before July 18, 2008, and Defendants' reply papers, if any, on must be served on or before July 23, 2008.

Dated: New York, New York
July 8, 2008

HELLER, HOROWITZ & FEIT, P.C.

By: 
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